while the expectant heir's right is not recognized.[11] But more fundamentally, inheritance or succession[12] are the terms applied to the devolution and distribution of the real and personal property of an estate[13] which remains after all liabilities have been settled.[14] Dower on the other hand is itself an obligation of the estate created by the law. It is not part of the assets to be distributed; and so important an obligation is it considered that it must be satisfied not only prior to the distribution but even in preference to the other debts of the deceased.[15] This finally must be conclusive proof that the widow is really a creditor and in no sense a distributee,[16] and hence that dower is not a form of succession.[17]

The above reasoning can be supported by an analogy. It has been held that "a homestead right . . . is not a right which vests under the law by succession. It is a right bestowed by the beneficence of the law of this state for the benefit of the family "[18] and hence is not subject to an inheritance tax.[19] The same principle is equally applicable to the right of dower.

RECENT CASES.

ACCORD AND SATISFACTION — VALIDITY — RETENTION OF SUM OFFERED AS FULL SETTLEMENT OF ANOTHER'S DEBT. — The father of a debtor wrote to the creditor, offering, in full settlement of the debt, an amount less than that of the debt, and enclosing a draft for that amount. The creditor cashed the draft, and wrote that he had placed the sum on account. *Held*, that he cannot recover the balance from the debtor. *Punamchand* v. *Temple*, [1911] 2 K. B. 330 (C. A.).

The principal case does not profess to alter the strict English rule as to the question of satisfaction by a third person, but follows a *dictum* of Willes, J., in declaring that payment not technically satisfaction may bar further recovery by the creditor. See *Cook* v. *Lister*, 13 C. B. N. S. 543, 594. Yet, in order to have that effect, the payment must be received in full discharge of the debt. It was formerly held by the Court of Appeal that whether or not a check or draft, offered in full settlement, was accepted as such is a question of fact to be decided by the trial judge or jury. *Day* v. *McLea*, 22 Q. B. D. 610. The principal case

[11] Thorne *v.* Cosand, 160 Ind. 566, 67 N. E. 257.

[12] The words are practically synonymous according to modern use. See Stolenburg *v.* Diercks, 117 Ia. 25, 29, 90 N. W. 525, 526.

[13] See State *v.* Payne, 129 Mo. 468, 477, 31 S. W. 797, 798.

[14] McLaughlin *v.* Bank of Potomac, 7 How. (U. S.) 220.

[15] See Sisk *v.* Smith, 6 Ill. 503, 511. In Pennsylvania it is otherwise by statute. See Porter *v.* Lazear, 109 U. S. 84, 86, 3 Sup. Ct. 58, 59.

[16] See Hill's Admrs. *v.* Mitchell, 5 Ark. 608, 618.

[17] "The dissimilarity in the origin, character and duration of the two estates (that of the widow and the heir) must be plain to every apprehension." See Sutherland *v.* Sutherland, 69 Ill. 481, 486. This conclusion is not weakened when, as in the principal case, there is a statute limiting the right of dower to those lands of which the husband died seised. Such a statute, in derogation of the common law, cannot be held to change the nature of dower unless it expressly so provides. It must be confessed, however, that if both this statute and the Pennsylvania statute in note 15 were in effect in the same jurisdiction, from an analytical point of view it would be hard to distinguish such an emasculated dower from a form of inheritance like the *pars legitima* of the Civil Law.

[18] See Estate of Moore, 57 Cal. 437, 442.

[19] *In re* Kennedy's Estate, *supra*.

admits that the question is one of fact, but declares that a written protest does not override the evidence of acceptance afforded by the cashing of the draft. It seems doubtful, therefore, whether any evidence would have satisfied the court that the inference of acceptance had been rebutted. If that be so, the principal case shows a strong tendency to overthrow the rule that the question is the one of fact referred to above. For a discussion of the principles involved, see 17 HARV. L. REV. 459, 469–473.

ADMIRALTY — TORTS — DAMAGES RECOVERABLE FROM ONE OF TWO VESSELS AT FAULT. — In a collision at sea a vessel in tow was injured by the fault of the tug and a third vessel. *Held*, that the vessel in tow may recover her whole damage from the third vessel. *The Devonshire*, 27 T. L. R. 490 (P. D.).

This is clearly irreconcilable on principle with the English rule that an innocent cargo can recover only one half of its damage from one of two vessels injuring it. *The Drumlanrig*, [1910] P. 249. If the court allows contribution on the facts of the principal case, the result will be that where a vessel is injured, the English rule as to joint tortfeasors will be the same as the American. See 24 HARV. L. REV. 150. But it seems hardly likely that the English court will allow contribution in a separate suit, since it has refused to allow it where both tortfeasors are in court. *The Avon and Thomas Joliffe*, [1891] P. 7.

ADVERSE POSSESSION — SUBJECT MATTER AND EXTENT — APPLICATION OF CONSTRUCTIVE POSSESSION DOCTRINE TO LARGE TRACTS OF LAND. — The defendant having been for more than 25 years in actual possession of 15 to 20 acres of land under color of title to a 320-acre tract, the plaintiff brought an action of ejectment to recover the entire tract. *Held*, that the defendant has acquired title to the 320 acres. *Marietta Fertilizer Co.* v. *Blair*, 56 So. 131 (Ala.).

By the American doctrine, the occupation of part of a tract of land under color of title to the whole is constructive adverse possession of the entire tract. *Ellicott* v. *Pearl*, 10 Pet. (U. S.) 412. The reason for this rule is that it is impracticable for the occupant to clear and cultivate an entire farm at one time. See *Jackson d. Gilliland* v. *Woodruff*, 1 Cow. (N. Y.) 276, 287. This reasoning is obviously inapplicable to a case where actual possession of a few acres is made the basis for a claim to a vast expanse of country. *Chandler* v. *Spear*, 22 Vt. 388. Accordingly, several courts have held that the amount of land which can be thus obtained must be limited to a tract which can be used in one body according to the usual manner of business of the country. *Thompson* v. *Burhans*, 61 N. Y. 52. See *Murphy* v. *Doyle*, 37 Minn. 113, 116, 33 N. W. 220, 222. The difficulty of applying such a rule is perhaps increased, as the principal case points out, by the large-scale methods of modern business, but its necessity is clear. *Archibald* v. *New York Central, etc. R. Co.*, 1 N. Y. App. Div. 251, 37 N. Y. Supp. 336. The weight of authority, however, is perhaps in accord with the principal case. *Doe d. Lenoir* v. *South*, 10 Ired. (N. C.) 237; *Hicks* v. *Coleman*, 25 Cal. 122. The question is regulated by statute in several states. N. Y. CODE CIV. PROC., § 370; CAL. CODE CIV. PROC., 1906, § 323.

AGENCY — AGENT'S LIABILITY TO THIRD PARTIES — THEORY OF UNDISCLOSED PRINCIPAL APPLIED TO TORTS. — The defendant, concealing the fact that he was merely an agent, employed the plaintiff to work on a building. The plaintiff did not know till after the injury complained of that the defendant was an agent. There was no evidence that the defendant was personally negligent. *Held*, that the defendant is liable as if he were the principal. *Yarslowitz* v. *Bienenstock*, 130 N. Y. Supp. 931 (Sup. Ct.).

The agent of a disclosed principal is not liable for injuries to subagents unless he himself has been negligent. *Stone* v. *Cartwright*, 6 T. R. 411; *Brown*